

Allan Sobol, Plaintiff pro/per
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NOA 155

MICHAEL K. JEANES
Clerk of the Superior Court
By Kristy Kee, Deputy
Date 07/18/2011 Time 12:42:27

Description	Amount
CASE# CV2011-053246	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
Receipt# 21507372	

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

<p>Allan Sobol,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">V.</p> <p>STATE OF ARIZONA; JANICE K. BREWER, Governor of the State of Arizona, in her Official Capacity; WILL HUMBLE, Director of the Arizona Department of Health Services, in his Official Capacity;</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: right;">CV2011-053246</p> <p>Case No.</p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY JUDGMENT</p>
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Plaintiff, for his Complaint against the Defendants named herein, allege as follows:

THE AMMA

1. On November 2, 2010, Arizona voters were asked to consider whether the

State should decriminalize medical marijuana. Proposition 203, an initiative measure identified as the "Arizona Medical Marijuana Act" ("The Act" or "AMMA"), envisioned decriminalizing medical marijuana for use by people with certain chronic and debilitating medical conditions. Qualifying patients would be able to receive up to 2 ½ ounces of marijuana every two weeks from medical marijuana dispensaries or to cultivate their own plants under certain conditions. Proposition 203 provided that its purpose "is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana."

2. Arizona voters passed Proposition 203 in November 2010; the Governor signed it into law on December 14, 2010.
3. The Act requires the Arizona Department of Health Services ("ADHS") to be responsible for implementing and overseeing the Act.
4. Specifically, the Act provides for the registration and certification by the ADHS of "nonprofit medical marijuana dispensaries," "nonprofit medical marijuana dispensary agents," "qualifying patients," and "designated caregivers."
5. Additionally, under A.R.S. 36-2811B of the ACT, A registered qualifying patient or registered designated caregiver is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege, including any civil

penalty or disciplinary action by a court or occupational or professional licensing board or bureau:

1. For the registered qualifying patient's medical use of marijuana pursuant to this chapter, if the registered qualifying patient does not possess more than the allowable amount of marijuana.

2. For the registered designated caregiver assisting a registered qualifying patient to whom he is connected through the department's registration process with the registered qualifying patient's medical use of marijuana pursuant to this chapter if the registered designated caregiver does not possess more than the allowable amount of marijuana.

3. For offering or providing marijuana to a registered qualifying patient or a registered designated caregiver for the registered qualifying patient's medical use or to a registered nonprofit medical marijuana dispensary if nothing of value is transferred in return and the person giving the marijuana does not knowingly cause the recipient to possess more than the allowable amount of marijuana. (emphasis added)

6. Under the Act, the ADHS is required to adopt rules establishing the form

and content of applications, the manner in which applications will be considered, the amount of application and renewal fees within certain maximum limits, and rules governing dispensaries.

7. As required by the Act, the ADHS promulgated final rules that were filed with the Secretary of State on April 13, 2011.

8. On April 14, 2011, the ADHS began accepting applications from persons who sought to be certified as Qualifying Patients and Designated Caregivers. As of July 13, 2011, 7570 Qualifying Patients and 270 Designated Caregivers were certified by the ADHS.

9. Under the Act, the ADHS is required to register nonprofit medical marijuana dispensaries and to issue a registration certificate within 90 days after receiving an application.

10. Under the Act, the ADHS is required to register nonprofit medical marijuana dispensary agents and to issue registry identification cards to qualifying patients and designated caregivers within certain time frames after receipt of information and documents as set forth in the AMMA.

11. According to the ADHS rules, ADHS was supposed to begin accepting applications for nonprofit medical marijuana dispensaries and nonprofit medical marijuana dispensary agents on June 1, 2011.

12. Under the Act, a qualified patient, designated caregiver, or nonprofit

medical marijuana dispensary agent with a registry card is allowed to acquire, possess, cultivate, manufacture, use, administer, deliver, transfer, and transport marijuana.

13. Under the Act, registered nonprofit medical marijuana dispensaries are allowed to dispense marijuana to qualifying patients and designated caregivers.

14. On or about June 1, 2011 defendant Brewer suspended the dispensary portion of the AMMA and filed a complaint for Declaratory Judgment with the United States District Court, District of Arizona. The Complaint, while not relevant to this instant action, asked the Federal District Court to (A). declare the respective rights and duties of the Plaintiffs and the Defendants in that action regarding the validity, enforceability, and implementation of the AMMA and (B), determine whether strict compliance and participation in the AMMA provides a safe harbor from federal prosecution. Defendant Brewer has only suspended the dispensary portion of the Act, and upon information and belief, only seek Declaratory relief on that portion of the Act. The federal Government has previously established their policy with respect to individual patients and their respective caregivers, to wit:

The Ogden Memo states that "[a]s a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is

unlikely to be an efficient use of limited federal resources."

15. Defendants suspension of the dispensary program effectively denied most qualified patients the ability and right to obtain the medical marijuana authorized under the ACT.

16. The very purpose of the Act was to provide for a qualifying patient, who has a "debilitating medical condition" to obtain an "allowable amount of marijuana" from a nonprofit medical marijuana dispensary" and to possess and use the marijuana to treat or alleviate the debilitating medical condition or symptoms associated with the medical condition. Under the ACT a "Debilitating medical condition" means one or more of the following:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, crohn's disease, agitation of alzheimer's disease or the treatment of these conditions.

(b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

(c) Any other medical condition or its treatment added by the department pursuant to section 36-2801.01.

Denial of relief to these seriously ill patients equates to cruel and unusual punishment.

17. A patient who resides more than 25 miles from an existing Dispensary was permitted under the ACT to grow up to 12 plants of their own medical marijuana, and permitted such patients to retain the services of a caregiver, if they were unable or unwilling to grow their own. Presently without an active Dispensary program, all 7570 patients live more than 25 miles from a dispensary. This portion of the ACT has NOT been suspended by the defendants, and remains in full force and effect.

17. Most qualified patients have serious debilitating conditions, including loss of limbs and other disfigurements, precluding their ability to actively perform the physical requirements necessary to grow marijuana, indeed any gardening at all.

18. Growing marijuana is a very costly proposition. Most qualified patients are disabled living on government assistance or reside on very limited fixed incomes. This fact precludes the ability of most patients to pay the reimbursement to caregivers for "actual costs incurred in assisting a registered qualifying patient's medical use of marijuana", as permitted under the ACT. Such cost could run in the thousands of dollars.

19. Absent a viable dispensary program where a qualified patient could purchase affordable small quantities of medical marijuana as needed, denies these patients the right under the Act to possess and use medical marijuana.

20. The only recourse available to these disfranchised qualified patients is to seek and acquire free quantities of medical marijuana from other qualified patients who are willing to donate their excess marijuana as it may be available.

21. Under the AMMA (36-2811), "patient to patient" transfers of medical marijuana is specifically permitted provided nothing of value is exchanged.

22. The inherent problem is the fact that under the ACT all qualified patient records maintained by AHDS are confidential. In fact, the AMMA makes it a crime for any AHDS employee to release patient information to a third party. Consequently, there is no way, other than high risk internet classified exchanges, for a patient looking to acquire free marijuana to locate another donating patient with excess marijuana.

23. The majority of qualified patients are some of the most vulnerable members of our society. Many are confined to wheel chairs or simply weak and frail resulting from their debilitating conditions. These individuals suffer daily from chronic pain and other ailments that this Act was intended to alleviate. Absent a safe and legal way to acquire their medication these qualified patients are forced into the very risky black market to acquire the medication they so desperately desire. This

exposes many qualified patients to the criminal elements including con artist and robbers.

24. The Plaintiff is a professional businessperson, having been in the marketing and consulting business in excess of 40 years.

25. The Plaintiff is also a qualified patient under that ACT and has obtained a medical marijuana card from AHDS.

26. The Plaintiff has become a leader in the Arizona Medical Marijuana Industry by pioneering niche services to meet the requirements of the Act. For example Plaintiff Sobol established Arizona's first and only "Cannabis University" providing patients, dispensary applicants and other interested parties with quality Medical marijuana education. The focus of the school has always been vested in full compliance with the law. Sobol also started the Arizona Association of Dispensary Professionals, Inc, which boost over 9000 members and alleges to be the largest marijuana trade association in this state. Additionally, Sobol was instrumental in the formation of Marijuana Marketing Strategies, LLC a company whose primary purpose was to assist dispensary candidates prepare professional applications to ADHS. Marijuana Marketing grew to be the largest company of its kind in Arizona. . Sobol has been an outspoken advocate for patient's rights and equality in the administration of the AMMA. Sobol also organized, promoted and sponsored numerous marijuana educational seminars across the state, many of

them free, including "The Extreme Education Expo" in March 2011 and the "Green Relief Expo" in April 2011. As a result of all of Sobol's presentations, he has become known for his commitment to full compliance with the law.

27. Most recently, Sobol developed a business concept intended to provide qualified patients with a venue to network. The 2811 Club, LLC, (*Named after the provisions of the Act which allow patient to patient transfers*), also referred to as a "Cannabis Club", is a qualified patient Educational and Advocacy facility. The 2811 Club, LLC is a professionally operated, membership only entity. (*It should be noted that Sobol made extraordinary efforts to maintain transparency in the development of this business model. Sobol invited all local law enforcement, including the US Attorney, Maricopa County Attorney, the AZ Attorney General, the Maricopa County Sheriff, the Defendant AZDHS, and the Phoenix Police department, to visit the facility prior to opening and welcomed their input and opinions. Only the Phoenix Police sent a delegation to visit*). Members must be a qualified patient under the ACT and possess a medical marijuana card issued by ADHS to enter the facility. Sobol's business model and name was licensed to a group of business partners who, on July 4th 2011, opened the first ,of what is expected to be many stores. Sobol is retained by the group to act as its marketing agent. Sobol retains the exclusive right to market the name and business model to other individuals or entities.

26. The Club charges a onetime application fee (\$25.00) and thereafter membership dues of \$75.00 whenever a member wishes to visit the facility. The Club does provide numerous "value -packed" benefits to its paid members including: Extensive daily educational services, unique marijuana library, and comprehensive on-line resources, specialized discounts on various marijuana related products and services, daily entertainment, daily pain management services and demonstrations, testing services, strain consulting, and perhaps most importantly the unique ability to safely network with other qualified patients. The plaintiff recognizes that this club may not have value for all qualified patients. Value is what you perceive it to be! Most of our Club members have serious debilitating conditions and chronic pain. Some who are very vulnerable, and feel the need for the security and safety, some who want the ability to become educated on all aspects of medical marijuana, some who desire to purchase their medication in a safe, legal and dignified manner, some who feel the need to be assured of quality medication, some who want the expectation of coming into a professional and clean business operation , some who want the collective camaraderie and social networking that our campus offers, some who simply enjoy the entertainment and resources, the Cub offers. For all these members The 2811 Club brings great value, and for these aforementioned reasons the medication

they receive is in absolutely FREE. Then there are those who simply want to cop a bag of weed, the Club recommends they look elsewhere.

27. The 2811 Club is operated out of a 2000 sq ft retail store front, where it's Star Bucks inspired interior is designed to be very comfortable and welcoming. The Club is self-policing and maintains armed guards, extensive security, strict membership rules of conduct and patient verification and tracking.

28. The 2811 Club is in fact a school with a campus that allows qualified patients to freely network. The Club among other services facilitates the legal interaction between qualified patients.

29. The club does not itself distribute marijuana and does not allow any onsite consumption of marijuana. However the club does permit its members, (again, *all of whom are qualified patients under the AMMA*), to transfer and exchange medical marijuana amongst themselves as long as there is no exchange of value.

30. Additionally, The Club donates space to a private not for profit legal entity called the Arizona Compassion Association, inc. who is comprised of approximately 50 qualified patients who presumably all grow their own medical marijuana pursuant to the ACT. These patients/caregivers donate small quantities (approximately 1/8 of an ounce) of their excess marijuana to any club member that request it. This Compassion Association is **not** affiliated with the Club ownership.

31. The Club Ownership has entered into a written agreement with the Association allowing the group to utilize space without cost, so long as the Association conducts itself in a business-like manner, does not exceed the allowable amounts specified under the ACT, provides medical grade free samples and exchanges nothing of value for the free samples.

32. The agreement includes a provision that that the club ownership may, at its sole discretion, make donations to the Association to off-set the operational cost of the Association. Upon information and belief the Club has not made any donations to the Association as of yet.

33. The Association maintains the sole discretion to determine the quantity, strains and potency of the free samples which are presumably based upon availability.

34. There is no correlation between the Club membership dues and the freely distributed medical marijuana. The quantity, potency and street value of the free samples may vary from day to day, subject to availability, while the membership dues are consistently the same. It is conceivable that on a given day a member of the Club could receive the maximum allowable amount of 2.5 ounces while still paying the same Club membership fee of \$75.00.

35. On July 14, 2011 Defendant Humble posted the following message on his Blog:

ADHS Asks AZ Attorney General's Office to Review the Legality of
"Cannabis Clubs"

Posted: 14 Jul 2011 04:20 PM PDT

The Arizona Department of Health Services has serious concerns about the legality of so-called cannabis clubs. The information that we have regarding these "clubs" suggests that they are distributing marijuana to customers in a way that is inconsistent with the provisions of the Arizona Medical Marijuana Act, and the persons involved could be conducting illegal marijuana transactions. For this reason, we have referred this issue to the Arizona Attorney General's Office for review and analysis by its civil and criminal divisions.

36. As a direct result of defendant Humble's statement the plaintiff's rights to ply his trade will be adversely curtailed, and plaintiff will suffer severe and irreparable personal and financial harm and damages.

37. Additionally, and perhaps more importantly, Defendant Humble's actions may leave thousands of qualified patients with no safe, dignified or legal way to obtain the medicine they voted for. Qualified patients, including plaintiff Sobol, will be deprived and disfranchised of their legal rights under the ACT to acquire and possess medical marijuana.

DECLARATORY JUDGMENT

38. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of the Plaintiffs and their legal relations with the Defendants to warrant relief under A.R.S 12-1832.

39. The harm to the Plaintiffs and the thousands of qualified medical marijuana patients as a direct result of the actions and threatened actions of the Defendants is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment.

40. It is well established that what makes a declaratory judgment action a Proper judicial resolution of a case or controversy rather than an advisory opinion is the settling of some dispute that affects the behavior of the defendant toward the plaintiff. Here, a declaration that Plaintiff's business model is in compliance with the AMMA would settle the current dispute which affects the behavior of the Defendants toward the Plaintiffs. Conversely, a declaration that plaintiffs business model is not in compliance with the AMMA would likewise settle the dispute which affects the behavior of the Defendants toward the Plaintiffs.

THE PARTIES

33. Plaintiff Allan Sobol, is a Arizona resident residing in Maricopa County.

34. Defendant Janice K. Brewer is the Governor of the State of Arizona ("Governor Brewer"). In that capacity, Governor Brewer is vested with the supreme executive power of Arizona and is responsible for the faithful execution of all laws, including the AMMA, and for the protection of the health and safety of Arizona's citizens and state employees, including those employees responsible for

implementing, administering, and overseeing the AMMA. Governor Brewer is being sued in her Official Capacity.

35. Defendant Director Humble is the Director of the ADHS. In that capacity, Director Humble is responsible for the ADHS employees who are implementing and overseeing the AMMA, A.R.S. §§ 36-2801, *et seq.*, Humble is being sued in his Official Capacity.

JURISDICTION AND VENUE

41. This Court has jurisdiction under A.R.S. 12-1831 The Uniform Declaratory Judgments Act.

CONCLUSION

42. By virtue of the foregoing, the defendant's statements places the Plaintiff in conflict with the AMMA.

43. Plaintiff contends that the Cannabis Club Business Model as defined herein does not violate the AMMA and should be allowed to continue its business operations without harassment or intimidation from the defendants.

44. Defendants contend that the Plaintiff's business model does violate the AMMA.

45. A controversy has arisen and now exists between Plaintiffs and Defendants
And,

46. In light of this controversy and the competing claims of the parties,

1 Plaintiff desires a declaration of Plaintiffs' rights with respect to whether the
2 Plaintiff's Cannabis Club business model complies with the AMMA and should be
3 allowed to continue its business operations.
4

5 47. Such a declaration is necessary so that Plaintiff may ascertain their rights
6 And duties because of the unsettled and competing claims of the parties.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request a declaratory judgment as follows:

10 A. The Court declare the respective rights and duties of the Plaintiffs and the
11 Defendants regarding the validity, of the Plaintiff's Cannabis Club Business
12 Model.
13

14 B. The Court determine whether the Plaintiffs Cannabis Club Business Model is in
15 compliance with the AMMA.

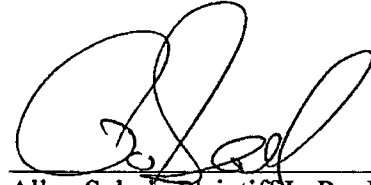
16 C. The Court grant such other and further relief as it deems appropriate and
17 proper.
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20 Dated this 18 day of July, 2011.

21 Allan Sobol

22 Plaintiff pro/per
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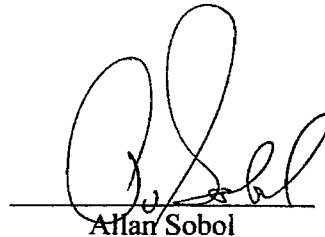
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4 RESPECTFULLY SUBMITTED this 18 day of July 2011.

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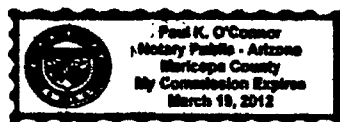
Allan Sobol, Plaintiff In Pro Per

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10
11 STATE OF ARIZONA)
12) ss.
13 County of Maricopa)

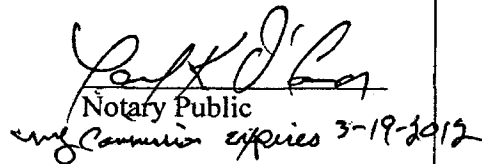
14 Allan Sobol, being first duly sworn, upon her oath, deposes and
15 states that he is the Plaintiff in the above-styled action, has read the
16 foregoing Complaint and, upon information and belief, knows the contents
17 therein to be true and correct,
18

19
20
21 
Allan Sobol

22
23 SUBSCRIBED AND SWORN to before me this 18th day of July 18, 2011,
24 by Allan Sobol.



18


Notary Public
my Commission expires 3-18-2012